IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 30055 of 2003(C)

PETITIONER:
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1. A.A.JOHNSON, AGED 48, S/O.ANTHAPAN,
ARIMBOOR HOUSE, CO-OPERATIVE LANE,
THRISSUR - 680020.

2. I.V.FRANCIS, AGED 51, S/O.VAREED,
INCHODIKKARAN HOUSE, PUTHEN ANGADI,
ARANATTUKARA, THRISSUR - 680 618.

3. I.V.THOMAS, S/O.VAREED,
INCHODIKKARAN HOUSE,
PUTHEN ANGADI, ARANATTUKARA,
THRISSUR - 680 618.

BY ADV. SRI.R.D.SHENOY (SR.)
SRI.PETER THARAKAN
SRI.S.VINOD BHAT

RESPONDENTS:

ASSISTANT DIRECTOR,
DIRECTOR OF ENFORCEMENT (FEMA),
GOVERNMENT OF INDIA,
SHASTRI BHAVAN, 3RD FLOOR,
3RD BLOCK, NO.26, HADDOWS ROAD,
CHENNAI - 600 006.

BY SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/11/2007, ALONG WITH WPC NO. 31426 OF 2003 & WPC NO. 31421 OF 2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 30055/2003)

PETITIONER'S EXHIBITS:

P1: COPY OF MEMORANDUM ISSUED BY RESPONDENT DT.9.2.2001 TO 1ST PETITIONER .

P2: .DO. DT.19.4.2001 TO 3RD PETITIONER.

P3: COPY OF LETTER ISSUED TO THE RESPONDENT BY 1ST PETITIONER DATED NIL.

P4: COPY OF LETTER DT.18.9.2003 ISSUED BY RESPONDENT.

RESPONDENT'S EXHIBITS:

R(a): TRUE COPY OF LETTER DT.18.2.97.

R2(b): .DO. DT.6.1.98.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) Nos.30055, 31421 & 31426 of 2003

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Dated this the 12th day of November, 2007.

JUDGMENT

Petitioners who were shareholders of the Catholic Syrian Bank Ltd. transferred their shares to SVG Group who are non-resident Indians stationed in Bangkok, Thailand. When the share certificates with transfer forms were sent by the Bank Secretariat, it referred the matter to RBI for their permission. The RBI declined permission and therefore, transfer of shares were not effected. Dividend subsequently accrued was deposited in the unpaid dividend account. Counsel for the petitioners submitted that the purchasers have later approached the RBI for permission to transfer the shares. In fact it is not known whether RBI permission is any longer required under the new regime permitting foreign investment in Indian Banks. The notices under challenge are issued by the Enforcement Directorate for violation of Section 19(1)(b) of the Foreign Exchange Regulation Act, 1973 which now stands repealed. It is stated in court that in a similar case the Madras High Court held that the transferor has no right to approach the RBI for permission to transfer the shares and only the Bank can maintain an application for permission for transfer of shares. The

judgment of the Madras High Court is stated to be pending in appeal before the Supreme Court. The transferees who have invested huge sums are not parties in these W.Ps. It is on record that the transferees are pursuing the matter with the RBI or Government of India.

2. The Supreme Court has in the decision in M/S.DALE & CARRINGTON INVT. (P) LTD. V. P.K.PRATHAPAN & OTHERS (JT 2004(7) SC 434) held that an application for permission can be entertained ex post facto. In other words, the Bank or the transferees can approach the RBI or Government for permission even after the shareholders sold shares to non-residents. Since the share transfer is not finally settled and is pending, I feel it is premature for the Enforcement Directorate to proceed with completion of adjudication for offences under the FERA which stands repealed now. Even though petitioners raised a contention that under Section 49 of the FEMA adjudication is barred by limitation of two years, I do not think this court should decide the matter now because decision on merits arises only if approval is not granted by RBI. In the circumstances, the W.Ps. are disposed of directing the concerned adjudicating officer of the Enforcement Directorate to withhold all adjudication proceedings until

finality is reached with regard to transfer of shares between the petitioners and the transferees through the orders of RBI or concerned department of Government of India.

C.N.RAMACHANDRAN NAIR
Judge

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